

STATE OF SOUTH DAKOTA
OFFICE OF PROCUREMENT MANAGEMENT
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA 57501-3182

Attorney Services for DSS – Division of Child Support

PROPOSALS ARE DUE NO LATER THAN APRIL 30, 2015 5:00 pm CST

RFP #223

BUYER: Division of Child Support

POC: Peggy Schmidt
Peggy.Schmidt@state.sd.us

READ CAREFULLY

FIRM NAME: _____ AUTHORIZED SIGNATURE: _____

ADDRESS: _____ TYPE OR PRINT NAME: _____

CITY/STATE: _____ TELEPHONE NO: _____

ZIP (9 DIGIT): _____ FAX NO: _____

FEDERAL TAX ID#: _____ E-MAIL: _____

PRIMARY CONTACT INFORMATION

CONTACT NAME: _____ TELEPHONE NO: _____

FAX NO: _____ E-MAIL: _____

1.0 GENERAL INFORMATION

1.1 PURPOSE OF REQUEST FOR PROPOSAL (RFP)

The Division of Child Support (DCS) is looking for an Attorney or Firm to provide legal services for Butte, Meade, and Lawrence counties.

1.2 ISSUING OFFICE AND RFP REFERENCE NUMBER

The Department of Social Services, Division of Child Support is the issuing office for this document and all subsequent addenda relating to it, on behalf of the State of South Dakota, Department of Social Services, Division of Child Support. The reference number for the transaction is RFP #223. Refer to this number on all proposals, correspondence, and documentation relating to the RFP.

Please refer to the Department of Social Services website link <http://dss.sd.gov/keyresources/rfp.aspx> for the RFP, any related questions/answers, changes to schedule of activities, etc.

1.3 SCHEDULE OF ACTIVITIES (SUBJECT TO CHANGE)

RFP Publication	<u>March 23, 2015</u>
Deadline for Submission of Written Inquiries	<u>April 15, 2015</u>
Responses to Offeror Questions	<u>April 17, 2015</u>
Proposal Submission	<u>April 30, 2015 5:00 pm CST</u>
Oral Presentations/discussions (if required)	
Deadline for Completion of Site Visits (if required)	
Proposal Revisions (if required)	
Anticipated Award Decision/Contract Negotiation	<u>May 8, 2015</u>

1.4 SUBMITTING YOUR PROPOSAL

All proposals must be completed and received in the Division of Child Support by the date and time indicated in the Schedule of Activities.

Proposals received after the deadline will be late and ineligible for consideration.

An original, 6 (six) identical copies, and one (1) digital copy of the proposal shall be submitted.

All proposals must be signed in ink by an officer of the responder legally authorized to bind the responder to the proposal, and sealed in the form intended by the respondent. Proposals that are not properly signed may be rejected. The sealed envelope must be marked with the appropriate RFP Number and Title. The words "Sealed Proposal Enclosed" must be prominently denoted on the outside of the shipping container.

Proposals must be addressed and labeled as follows:

**Request For Proposal #223 Proposal Due April 30 2015
South Dakota Department of Social Services
Attention: Shannon Abernathy
700 Governors Drive
Pierre SD 57501-2291**

No punctuation is used in the address. The above address as displayed should be the only information in the address field.

No proposal may be accepted from, or any contract or purchase order awarded to any person, firm or corporation that is in arrears upon any obligations to the State of South Dakota, or that otherwise may be deemed irresponsible or unreliable by the State of South Dakota.

1.5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS

By signing and submitting this proposal, the offeror certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation, by any Federal department or agency, from transactions involving the use of Federal funds. Where the offeror is unable to certify to any of the statements in this certification, the bidder shall attach an explanation to their offer.

1.6 NON-DISCRIMINATION STATEMENT

The State of South Dakota requires that all contractors, vendors, and suppliers doing business with any State agency, department, or institution, provide a statement of non-discrimination. By signing and submitting their proposal, the offeror certifies they do not discriminate in their employment practices with regard to race, color, creed, religion, age, sex, ancestry, national origin or disability.

1.7 MODIFICATION OR WITHDRAWAL OF PROPOSALS

Proposals may be modified or withdrawn by the offeror prior to the established due date and time.

No oral, telephonic, telegraphic or facsimile responses or modifications to informal, formal bids, or Request for Proposals will be considered.

1.8 OFFEROR INQUIRIES

Offerors may email inquiries concerning this RFP to obtain clarification of requirements. No inquiries will be accepted after March 1, 2015. Email inquiries must be sent to Peggy.Schmidt@state.sd.us with the subject line "RFP #223."

The Department of Social Services will respond to offerors inquiries by posting the offeror aggregated questions and Department responses on the DSS website at <http://dss.sd.gov/keyresources/rfp.aspx> no later than March 30, 2015. Offerors may not rely on any other statements, either of a written or oral nature, that alter any specification or other term or condition of this RFP. Offerors will be notified in the same manner as indicated above regarding any modifications to this RFP.

1.9 PROPRIETARY INFORMATION

The proposal of the successful offeror(s) becomes public information. Proprietary information can be protected under limited circumstances such as client lists and non-

public financial statements. Pricing and service elements are not considered proprietary. An entire proposal may not be marked as proprietary. Offerors must clearly identify in the Executive Summary and mark in the body of the proposal any specific proprietary information they are requesting to be protected. The Executive Summary must contain specific justification explaining why the information is to be protected. Proposals may be reviewed and evaluated by any person at the discretion of the State. All materials submitted become the property of the State of South Dakota and may be returned only at the State's option.

1.10 LENGTH OF CONTRACT

The contract will be for a length of one year with the option to renew for four additional 1 year periods totaling a five year contract. The contract will run from June 1st through May 31st of each year.

1.11 GOVERNING LAW

Venue for any and all legal action regarding or arising out of the transaction covered herein shall be solely in Hughes County, State of South Dakota. The laws of South Dakota shall govern this transaction.

1.12 DISCUSSIONS WITH OFFERORS (ORAL PRESENTATION/NEGOTIATIONS)

An oral presentation by an offeror to clarify a proposal may be required at the sole discretion of the State. However, the State may award a contract based on the initial proposals received without discussion with the offeror. If oral presentations are required, they will be scheduled after the submission of proposals. Oral presentations will be made at the offeror's expense.

This process is a Request for Proposal/Competitive Negotiation process. Each Proposal shall be evaluated, and each respondent shall be available for negotiation meetings at the State's request. The State reserves the right to negotiate on any and/or all components of every proposal submitted. From the time the proposals are submitted until the formal award of a contract, each proposal is considered a working document and as such, will be kept confidential. The negotiation discussions will also be held as confidential until such time as the award is completed.

2.0 STANDARD AGREEMENT TERMS AND CONDITIONS

Any contract or agreement resulting from this RFP will include the State's standard terms and conditions as seen in Exhibit A.

The Respondent may view past contracts for the South Dakota Department of Social Services, Division of Child Support at <http://open.sd.gov/>, however, the terms of the contract signed pursuant to this RFP will be negotiated pursuant to Paragraph 6 of this RFP and there may be additions to or deletions from prior contracts. Reference to prior contracts is for edification purposes only.

3.0 SCOPE OF WORK

In 1975, Congress enacted Part D of the Social Security Act requiring every State to operate a single and separate child support enforcement program that meets federally mandated requirements as a condition to receive federal funding for Temporary Assistance for Needy Families (TANF) programs. The provisions of Title IV-D of the Social Security Act and accompanying regulations at 45 CFR 301-308 inclusive, establish the requirements states must implement.

Initially in 1975 and following, the primary goal of the federal/state child support programs was to recover government expenditures made to TANF recipients. So when families receive TANF benefits, they assign their right to child support to the state, and the state retains child support payments collected to offset the TANF benefits they received. Under federal laws enacted in 1984, 1989, and 1993 the program was expanded extensively to require states to implement many new uniform types of paternity establishment, order establishment, and enforcement services; and to provide equal services to both TANF and Non-TANF families. The Non-TANF caseload has increased and the primary goal of the child support program shifted from a cost recovery/savings program, to one that assisted families to become self-sufficient without relying on public assistance benefits. Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in 1996, commonly referred to as the Welfare Reform Act of 1996. This Act required the most massive changes in new uniform requirements to be used by every state child support program in the country and significantly transformed the primary focus of the child support program to helping families not to rely on public assistance. The Deficit Reduction Act of 2005 enacted in 2006 further improved existing enforcement options, added new ones, allowed states more flexibility in distributing collections, but significantly reduced federal funding by eliminating the federal match on incentive payments. The American Recovery and Reinvestment Act of 2009 (ARRA) temporarily restored the use of incentives for federal match in FFY-2009 and 2010, but this provision expired October 1, 2010. The recent passing of HR 4980 (Preventing Sex Trafficking and Strengthening Families Act) **enacted September 29, 2014** sets the following requirements for Child Support programs:

- Requires states to make necessary changes to implement the Hague Convention in enforcing international child support cases, increasing the amount of child support collected for families.
- Requires data standardization within the child support enforcement program, improving administration. This would streamline the child support programs with TANF, child welfare, Unemployment Insurance and SNAP.
- Requires all states to implement electronic processing of income withholding, as most states already do; this will improve the collection of child support and save taxpayers \$48 million over 10 years.
- Requires the Secretary of Health and Human Services to review and provide recommendations for improvements to the Child Support Enforcement Program and submit a report to Congress by 6/30/15.

The primary goals of the Division of Child Support (DCS) program are to locate noncustodial parents, establish paternity, establish and modify child support obligations, enforce child and medical support obligations, and collect and distribute child support payments. Services are required to be provided on TANF, Medical Only, and Title IV-E Foster Care cases, and to any other family upon application for services which are referred to as Non-TANF cases.

This specific areas history of referrals is as follows:

Butte/Meade/Lawrence # of Referrals

	SFY2013	SFY2014	SFY2015 (through Jan-15)
Paternity Establishment	12	25	6
Order Establishment	0	1	0
Enforcement	386	471	324
Other	0	0	0
Total	398	497	330

3.1 Responses:

3.1.1 The Respondent will provide a detailed description of how they intend to perform the work in sections 3.2 through 3.6 and 3.8. The information should include name and title of staff assigned and a detailed description of duties they will perform.

3.2 The Respondent must have graduated from an accredited school of law. Provide name of law school.

3.3 The Respondent must be certified to practice in the State of South Dakota. Provide date of certification.

3.4 The Respondent will be familiar with family law. Provide a summary of experience in family law.

3.5 The Respondent will be comfortable in court room proceedings and will be able to complete the requested actions in an expedited manner.

3.6 Respondent Duties and Responsibilities:

3.6.1 Respondent, upon written request by DCS, shall initiate, prosecute, and resolve, on behalf of DCS and the State, all actions or proceedings, whether civil or criminal in nature, in which the state is interested, or is a party, and as specifically requested by DCS for cases where venue is set in Butte, Meade, and Lawrence counties. The Respondent will provide any reason where this may not be possible.

3.6.2 Respondent shall provide services for the benefit of DCS, for which he/she will be entitled to receive compensation as specified in the contract, which services are generally described as follows:

3.6.2.1 Respondent will describe their office procedures to keep and maintain a separate individual case record for each matter referred by DCS, which includes records, documents, narratives of contacts, and related matters, and as required by DCS;

3.6.2.2 Respondent will provide their policy and procedures that will discuss how they will maintain, report, and safeguard any and all records, data, or information which are required to be maintained by the terms of the contract, or by any Federal, State, or DCS requirement;

3.6.2.3 Respondent will seek to reduce all voluntary and statutory support obligations to a judicially determinable sum in all cases referred by DCS. The Respondent will provide any reason where this may not be possible;

3.6.2.4 Respondent will monitor the cooperation of the applicant or recipient, and provide timely notice of non-cooperation to DCS. The Respondent will provide their proposed method for providing timely notice;

3.6.2.5 Respondent will establish and enforce support obligations, including arrearages, through use of both civil and criminal procedures and remedies. The Respondent should provide a short summary of their familiarity with this process;

3.6.2.6 Respondent will establish paternity, including identification of the father by investigation and/or genetic testing as necessary. The Respondent should provide a short summary detailing their familiarity with this establishment process;

3.6.2.7 Respondent will investigate and prosecute fraud directly related to child support, paternity, and related matters;

3.6.2.8 Respondent will file Uniform Interstate Family Support Act (UIFSA) actions as requested by DCS for forwarding to a responding state, tribe or foreign country. The Respondent should provide a summary of their familiarity with UIFSA actions;

3.6.2.9 Respondent will utilize UIFSA, and other reciprocal arrangements with other states, tribes and foreign countries, when authorized by DCS, and assist those intergovernmental entities in locating noncustodial parents, establishing paternity and/or a child support obligation, or legal enforcement for the collection of support for a child or spouse (if previously ordered) from another state. The Respondent will provide a summary of their familiarity with the above enforcement remedies;

3.6.2.10 Respondent will provide legal representation to the DCS, for cases referred by the DCS. Legal representation of the DCS shall not create an attorney/client relationship between the Attorney or Firm and the applicant or recipient;

3.6.2.11 Respondent will establish and enforce requirements for medical health insurance coverage in appropriate cases, including cases involving the determination of paternity, and as requested by DCS. Note: the DCS enforces medical support based on rules and regulations specific to the program which may be different than the laws outlined in the Affordable Care Act. The Respondent will provide a summary of their familiarity with medical support enforcement within the child support arena;

3.6.2.12 Respondent will perform such other functions as may be consistent in meeting the duties and responsibilities contained within this Scope of Work, or as requested by DCS; and

3.6.2.13 Respondent agrees to adhere to, implement, and follow all DCS policies, procedures, and directives of either DCS State Office or the Child Support Specialist Supervisor, whether written or verbal;

3.6.3 In addition to the general services described above, respondent will also have the following specific responsibilities:

3.6.3.1 Within thirty days of referral, respondent shall report to DCS regarding the status of all cases referred, and upon final disposition of action taken, furnish DCS with copies of court orders, judgments, or other pertinent and necessary documents. Within five (5) days of successful service of process, respondent shall also advise DCS in writing on a form provided by DCS of the date(s) of successful service of process. Respondent will also document in writing within the referred file all date(s) of attempted service of process and the reason(s) for any unsuccessful attempt(s). Respondent shall also notify DCS of an exercise of prosecutorial discretion not to initiate any legal proceeding requested by DCS, with a brief statement of his/her reasons therefore;

3.6.3.2 Upon completion of all essential and necessary services, respondent will submit an itemized statement of work performed on each case and a claim for allowed expenses. Respondent will utilize specific forms furnished by DCS in submitting claims. Forms will be completed in accordance with the instructions thereon. A separate claim form will be submitted for each individual case referred, and no claims will be submitted until all necessary work is completed by respondent thereon, or as directed by the DCS State Office;

3.6.3.3 Respondent will maintain and permit access to all records, case files, and other records as requested by DCS, until completion of all audits initiated by DCS or federal auditors, or for a period of three years, whichever occurs later;

3.6.3.4 Respondent will obtain written approval from DCS for any agreement or compromise settlement concerning the support of a child in paternity cases, pursuant to SDCL 25-8-8, prior to submitting the agreement to the court for approval;

3.6.3.5 Respondent will obtain written approval from DCS in negotiating compromise settlements, or stipulations, which reduce the amount of arrearages due on court-ordered or statutory support obligations, either in obtaining a judgment, or in satisfaction thereof;

3.6.3.6 Respondent will immediately advise DCS of any conflict of interest which may arise by reason of his/her private practice of law, or otherwise, with respect to specific individuals or cases being pursued on behalf of DCS. The policy concerning conflict of interest can be found in Exhibit B;

3.6.3.7 Respondent will refund to DCS any amounts paid to him/her which are disallowed by audit procedures;

3.6.3.8 Respondent will obtain written approval of DCS prior to using any confidential or private data in any legal action, and as defined herein;

3.6.3.9 Respondent will comply with all pertinent policy memoranda, directives, and procedures which DCS may furnish from time to time;

3.6.3.10 Respondent will meet any and all performance standards as contained in federal regulations or State law, and meet any and all performance standards which may be promulgated by DCS from time to time; and

3.6.3.11 Respondent will immediately contact and advise DCS State Office of any conflict of interest or appearance of impropriety situations encountered as a result of prosecuting or handling any DCS referred case(s).

3.6.3.12 Respondent will outline their plan for providing customer service for custodial and noncustodial parents that are involved with a legal action referred to his/her office.

3.7 DCS Duties and Responsibilities:

3.7.1 The Department of Social Services Division of Child Support (DCS) will refer civil and criminal cases involving the establishment and enforcement of child support obligations, establishment of paternity, and other related matters to respondent, requesting the initiation of appropriate procedures to insure the protection of the state's interest, and the interests of the children and custodial parent, said request to be submitted in writing on Form DSS-SE-440;

3.7.2 DCS will provide respondent all information necessary to commence, prosecute, and conclude this matter, and will assist in the investigation and preparation of all cases referred to respondent for action;

3.7.3 DCS will provide to respondent all pertinent information, including records and documents, needed to locate noncustodial parents; to establish paternity; to establish and enforce support obligations; and related matters;

3.7.4 DCS will pay the entire cost of prosecution, including the compensation of respondent as contracted;

3.7.5 DCS will pay the costs of genetic testing; polygraph testing; depositions; witness fees; service of process fees; and related litigation costs at rates or fees approved by DCS. These payments will be made by state warrant upon direct state voucher submitted by the proper vendor, without cost to respondent;

3.7.6 DCS will insure that all pertinent Federal and State laws or regulations will be readily available to the parties herein; and

3.7.7 DCS expressly reserves the right to recall a referred case from the respondent at any time. The respondent will be paid at the rate specified in the contract.

3.8 Mutual Duties and Responsibilities:

3.8.1 Both the DCS and respondent will comply with Title IV-D of the Social Security Act; any implementing regulations; and, any other applicable State and Federal regulations, or requirements.

3.8.2 Title IV-A of the Social Security Act as enacted and amended by Public Law 93-647; and other relevant and subsequent Acts of Congress, including Public Law 98-378; pertinent portions of the Code of Federal Regulations; and State laws and administrative rules will be incorporated in the contract by reference and made a part hereof as if fully set forth herein. These enactments, and any amendments or changes to such statutes, regulations, or rules will be transmitted to respondent by DCS, and at such time will be incorporated without formal amendment to the contract.

4.0 PROPOSAL REQUIREMENTS AND COMPANY QUALIFICATIONS

4.1 The offeror is cautioned that it is the offeror's sole responsibility to submit information related to the evaluation categories and that the State of South Dakota is under no obligation to solicit such information if it is not included with the proposal. The offeror's failure to submit such information may cause an adverse impact on the evaluation of the proposal.

4.2 **Offeror's Contacts:** Offerors and their agents (including subcontractors, employees, consultants, or anyone else acting on their behalf) must direct all of their questions or comments regarding the RFP, the evaluation, etc. to the buyer of record indicated on the first page of this RFP. Offerors and their agents may not contact any state employee other than the buyer of record regarding any of these matters during the solicitation and evaluation process. Inappropriate contacts are grounds for suspension and/or exclusion from specific procurements. Offerors and their agents who have questions regarding this matter should contact the buyer of record.

4.3 The offeror **MUST** submit a copy of their most recent independently audited financial statements.

4.4 Provide the following information related to at least three previous and current service/contracts performed by the offeror's organization which are similar to the requirements of this RFP. Provide this information for any service/contract that has been terminated, expired or not renewed in the past three years:

- a. Name, address and telephone number of client/contracting agency and a representative of that agency who may be contacted for verification of all information submitted;
- b. Dates of the service/contract; and
- c. A brief, written description of the specific prior services performed and requirements thereof.

4.5 The offeror must submit information that demonstrates their availability and familiarity with the locale in which the project (s) are to be implemented.

4.6 The offeror must detail examples that document their ability and proven history in handling special project constraints.

4.7 If an offeror's proposal is not accepted by the State, the proposal will not be reviewed/evaluated.

4.8 In order to perform the duties and responsibilities described in this RFP, the successful offeror must designate, in writing, which individual attorney or attorneys in their firm will be performing the services for the DSS pursuant to the terms of the contract. Further, offeror understands that each individual so designated must receive and maintain an appointment as a Special Assistant Attorney General from the Attorney General of the State for the duration of the contract term or be employed as a State's Attorney.

5.0 PROPOSAL RESPONSE FORMAT

5.1 An original and 6 (six) copies shall be submitted.

5.1.1 In addition, the offeror must provide one (1) copy of their entire proposal, including all attachments and cost proposal, in PDF electronic format. Offerors may not send the electronically formatted copy of their proposal via email.

5.1.2 The proposal should be page numbered and should have an index and/or a table of contents referencing the appropriate page number.

5.2 All proposals must be organized and tabbed with labels for the following headings:

5.2.1 **RFP Form.** The State's Request for Proposal form completed and signed.

5.2.2 **Executive Summary.** The one or two page executive summary is to briefly describe the offeror's proposal. This summary should highlight the major features of the proposal. It must indicate any requirements that cannot be met by the offeror. The reader should be able to determine the essence of the proposal by reading the executive summary. Proprietary information requests should be identified in this section.

5.2.3 **Detailed Response.** This section should constitute the major portion of the proposal and must contain at least the following information:

5.2.3.1 A complete narrative of the offeror's assessment of the work to be performed, the offeror's ability and approach, and the resources necessary to fulfill the requirements. This should demonstrate the offeror's understanding of the desired overall performance expectations.

5.2.3.2 A specific point-by-point response, in the order listed, to each requirement in the RFP as detailed in Sections 3 and 4. The response should identify each requirement being addressed as enumerated in the RFP.

5.2.3.3 A clear description of any options or alternatives proposed.

5.2.4 **Cost Proposal.** Cost will be evaluated independently from the technical proposal. Offerors may submit multiple cost proposals. All costs related to the provision of the required services must be included in each cost proposal offered.

See section 7.0 for more information related to the cost proposal requirements.

6.0 PROPOSAL EVALUATION AND AWARD PROCESS

- 6.1 After determining that a proposal satisfies the mandatory requirements stated in the Request for Proposal, the evaluator(s) shall use subjective judgment in conducting a comparative assessment of the proposal by considering each of the following criteria listed in order of importance:
- 6.1.1 Specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements;
 - 6.1.2 Resources available to perform the work, including any specialized services, within the specified time limits for the project;
 - 6.1.3 Proposed project management techniques;
 - 6.1.4 Record of past performance, including price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration;
 - 6.1.5 Availability to the project locale;
 - 6.1.6 Familiarity with the project locale;
 - 6.1.7 Ability and proven history in handling special project constraints, and
 - 6.1.8 Cost proposal.
- 6.2 Experience and reliability of the offeror's organization are considered subjectively in the evaluation process. Therefore, the offeror is advised to submit any information which documents successful and reliable experience in past performances, especially those performances related to the requirements of this RFP.
- 6.3 The qualifications of the personnel proposed by the offeror to perform the requirements of this RFP, whether from the offeror's organization or from a proposed subcontractor, will be subjectively evaluated. Therefore, the offeror should submit detailed information related to the experience and qualifications, including education and training, of proposed personnel.
- 6.4 The State reserves the right to reject any or all proposals, waive technicalities, and make award(s) as deemed to be in the best interest of the State of South Dakota.
- 6.5 **Award:** The requesting agency and the highest ranked offeror shall mutually discuss and refine the scope of services for the project and shall negotiate terms, including compensation and performance schedule.
- 6.5.1 If the agency and the highest ranked offeror are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the agency, the agency shall, either orally or in writing, terminate negotiations with the contractor. The agency may then negotiate with the next highest ranked contractor.
 - 6.5.2 The negotiation process may continue through successive offerors, according to agency ranking, until an agreement is reached or the agency terminates the contracting process.

7.0 **COST PROPOSAL**

The cost proposal should provide the annual contracted cost as well as the additional expenses, and proposed cost per annual contract and include proposed additional expenses allowable as defined in the contract in Exhibit A.

Exhibit A

STATE OF SOUTH DAKOTA DEPARTMENT OF SOCIAL SERVICES DIVISION OF CHILD SUPPORT

Agreement for Legal Services Between

Name of Attorney

(specific attorney; not firm)

State of South Dakota
Department of Social Services
DIVISION OF CHILD SUPPORT SERVICES
700 Governors Drive
Pierre, SD 57501-2290

[Name of individual attorney]. (hereinafter referred to as "Attorney" agrees to provide legal services and represent the Department of Social Services, Division of Child Support (hereinafter referred to as "DSS") as needed. While performing services hereunder, Attorney is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

1. **ATTORNEY'S South Dakota Vendor number is _____.**

2. **PERIOD OF PERFORMANCE**

This agreement shall be effective as of **June 1, 2015** and shall end on **May 31, 2016**, unless sooner terminated pursuant to the terms hereof. Agreement is the result of request for proposal process, RFP #

3. **PROVISIONS:**

A. The Attorney agrees to perform the following services:

1. Attorney, upon written request by Division of Child Support (DCS), shall initiate, prosecute, and resolve, on behalf of DCS and the State, all actions or proceedings, whether civil or criminal in nature, in which the state is interested, or is a party, and as specifically requested by DCS;
2. Attorney shall provide services for the benefit of DCS, for which he/she will be entitled to receive compensation as specified in this Agreement, which services are generally described as follows:
 - a. Attorney shall keep and maintain a separate individual case record for each matter referred by DCS, which case record shall include records, documents, narratives of contacts, and related matters, and as required by DCS;
 - b. Attorney agrees to maintain, report, and safeguard any and all records, data, or information which are required to be maintained by the terms of this Agreement, or by a Federal, State, or DCS requirement;
 - c. Attorney shall seek to reduce all voluntary and statutory support obligations to a judicially determinable sum in all cases referred by DCS;
 - d. Attorney shall monitor the cooperation of the applicant or recipient, and provide timely notice of non-cooperation to DCS;
 - e. Attorney shall establish and enforce support obligations, including arrearages, through use of both civil and criminal procedures and remedies;
 - f. Attorney shall establish paternity, including identification of the father by investigation, genetic testing, as necessary;
 - g. Attorney shall investigate and prosecute fraud directly related to child support, paternity, and related matters;
 - h. Attorney shall file initiated Uniform Interstate Family Support Act (UIFSA) actions as requested by DCS for forwarding to responding state;

- i. Attorney shall utilize UIFSA, and other reciprocal arrangements with other states, when authorized by DCS, and assist other states in locating noncustodial parents, establishing paternity, or securing support for a child or spouse in another state;
- j. Attorney shall provide legal representation to the DCS, for cases referred by the DCS. Legal representation of the DCS shall not create an attorney/client relationship between the Attorney or Firm and the applicant or recipient of DCS services;
- k. Attorney will establish and enforce requirements for medical health insurance coverage in appropriate cases, including cases involving determination of paternity, as requested by DCS;
- l. Attorney shall perform such other functions as may be consistent in meeting the duties and responsibilities contained within the Agreement, or as requested by DCS;
- m. Attorney agrees to adhere to, implement, and follow all DCS policies, procedures, and directives of either DCS State Office or the Child Support Specialist Supervisor, whether electronic, written, or verbal;
- n. Within thirty (30) days of referral, Attorney shall report to DCS regarding the status of all cases referred, and upon final disposition of action taken, furnish DCS with copies of court orders, judgments, or other pertinent and necessary documents. Within five (5) days of successful service of process, Attorney shall also advise DCS electronically or in writing of the date(s) of successful service of process. Attorney shall also document within the referred file all date(s) of attempted service of process and the reason(s) for any unsuccessful attempt(s). Attorney shall also notify DCS of an exercise of prosecutorial discretion not to initiate any legal proceeding requested by DCS, with a brief statement of his/her reasons thereof;
- o. Upon completion of all essential and necessary services, Attorney shall submit a billing statement to include an itemized statement of work performed on each case and for allowed expenses. Attorney will utilize specific forms furnished by DCS in submitting claims, which forms will be completed in accordance with the instructions thereon. A separate claim form will be submitted for each case referred, and no claims will be submitted until all necessary work is completed by Attorney thereon, or as directed by the DCS State Office;
- p. Attorney shall maintain and permit access to all records, case files, and other records requested by DCS, until completion of all audits initiated by DCS or federal auditors, or for a period of three years, whichever occurs later;
- q. Attorney shall obtain approval of DCS of any agreement or compromise settlement concerning the support of a child in paternity cases, pursuant to SDCL 25-8-8, prior to submitting the agreement to the court for approval;
- r. Attorney shall obtain approval of DCS in negotiating compromise settlements, or stipulations, which reduce the amount of arrearages due on court-ordered or statutory support obligations, either in obtaining a judgment, or in satisfaction thereof;
- s. Attorney shall immediately advise DCS of any conflict of interest which may arise by reason of his/her private practice law, or otherwise, with respect to specific individuals or cases being pursued on behalf of DCS;
- t. Attorney shall refund to DCS any amounts paid to him/her which are disallowed by audit procedures;
- u. Attorney shall obtain approval of DCS prior to using any confidential or private data in any legal action, and as defined herein;
- v. Attorney shall comply with all pertinent policy memoranda, directives, and procedures which DCS may furnish from time to time;
- w. Attorney shall meet any and all performance standards as contained in federal regulations or State law, and meet any and all performance standards which may be promulgated by DCS from time to time; and
- x. Attorney shall immediately contact and advise DCS State Office of any conflict of interest or appearance of impropriety situations encountered as a result of prosecuting or handling any DCS referred case(s);
- y. In referred matters involving the establishment of paternity or establishment of support order, or both, Attorney will insure that a final order for support is established, or Attorney effectuates successful service of process for establishment of an order, within 30 days of referral by DCS. Attorney will also insure the case is concluded with the filing of a final order for support, or the case dismissed by court order, within 6 months of successful service of process;

- z. In referred matters involving the enforcement of a child support order, including the enforcement of health insurance requirement, Attorney will insure that appropriate enforcement action is completed within 30 calendar days of the date of referral if service of process is not necessary, or within 60 calendar days of successful service, if service of process is necessary for appropriate enforcement action; and
 - aa. In referred paternity case where either a paternity affidavit or genetic test results of 99% or higher exist, Attorney shall immediately prepare, file, and serve a Motion of Summary Judgment and Notice of Hearing with the appropriate circuit court on forms provided by DCS.
- 3. This agreement will not involve Protected Health Information (PHI).
If PHI is involved, a Business Associate Agreement, Exhibit B, is attached and fully incorporated herein as part of the agreement.
 - 4. The attorney will not use state equipment, supplies or facilities.
- B. The State agrees to:
- 1. The Department of Social Services, Division of Child Support (DCS) shall refer civil and criminal cases involving the establishment and enforcement of child support obligations, establishment of paternity, and other related matters to Attorney, requesting the initiation of appropriate procedures to insure the protection of the state's interest, and the interests of the children and custodial parent, said request to be submitted in writing on Form DSS-SE-440;
 - 2. DCS shall provide Attorney all information necessary to commence, prosecute, and conclude this matter, and shall assist in the investigation and preparation of all cases referred to Attorney for action;
 - 3. DCS shall provide to Attorney all pertinent information, including records and documents, needed to locate noncustodial parents; to establish paternity; to establish and enforce support obligations; and related matters;
 - 4. DCS shall pay the entire cost of prosecution, including compensation of Attorney as specifically provided herein;
 - 5. DCS shall pay the costs of genetic testing; depositions; witness fees; service of process fees; and related litigation costs at rates or fees approved by DCS. These payments will be made upon the submittal of an itemized statement of work by the vendor for the preparation of a direct voucher by the DCS;
 - 6. DCS shall ensure that all pertinent Federal and State laws or regulations will be readily available to the parties herein; and
 - 7. DCS expressly reserves the right to recall a referred case from the Attorney at any time. The Attorney will be paid as specified in Section 4 of this agreement.
- C. Mutual Duties and Responsibilities
- 1. Both the DCS and Attorney shall comply with Title IV-D of the Social Security Act; any implementing regulations; and, any other applicable State and Federal regulations, or requirements;
 - 2. Title IV-A of the Social Security Act as enacted and amended and other relevant and subsequent Acts of Congress; pertinent portions of the Code of Federal Regulations; and State laws and administrative rules are incorporated in the Agreement by reference and made a part hereof as if fully set forth herein. These enactments, and any amendments or changes to such statutes, regulations, or rules shall be incorporated without formal amendment to the Agreement.
4. **BILLING:**
- A. **It is hereby agreed that in consideration of fulfillment of the terms of this Agreement, DSS shall pay Attorney the total sum of [], to be paid at a rate of [] commencing [term start] and each month thereafter through [term end] during the term of this contract, plus allowable expenses up to \$[expense limit]. A monthly invoice or billing statement shall be submitted to the DCS, within 30 days of the last day of the month, to be paid the monthly rate. Payments made to the Attorney as specified herein shall be deemed to include all taxes of any description, federal, state, or municipal assessed against the Attorney by reason of this agreement.**

- B. In addition to the payments as specified in paragraph A above, DCS shall also reimburse the Attorney only for the following expenses:
1. Telephone toll calls and FAX expenses;
 2. Photocopying of cases and related documents at a rate of ten cents per page;
 3. Expenses of short term training activities which are sponsored by prevailing rates established by the State for lodging, meal, and travel expenses;
 4. DCS shall also pay litigation expenses so long as Attorney submits proof of payments, or receipts, with each request for payment or reimbursement; and
 5. Mileage will be reimbursed at the rates established by the State Board of Finance for cases prosecuted on behalf of DCS which cases arise and venue has been set outside the county of the Attorney's principal place of business.

The DCS will not pay or reimburse Attorney for any other expenses except as specified above unless Attorney obtains prior written approval from the DCS State Office.

- C. The Total Contract Amount, including payment of expenses as specified in paragraph B above, **will not exceed [total value incl. expenses]**. Payment will be in accordance with SDCL 5-26.
- D. Attorney shall submit a separate itemized statement of work for each case referred by DCS which details the amount of time and services performed on behalf of DCS. The statement of work shall be prepared on forms furnished by DCS, and shall not be submitted until all necessary work is completed, or as directed by DCS State Office.
- E. Attorney shall submit his/her statements of work and request for reimbursement of expenses with attached receipts on forms provided by DCS upon completion of the referred matter, itemized in sufficient detail to identify the case record, the purpose, and the date(s) of the incurred expenses.
- F. The DCS Child Support Specialist Supervisor shall review, approve, and transmit Attorney's claim for payment to the DCS State Office for purpose of review, approval, and payment of all claims.
5. **TECHNICAL ASSISTANCE:**
The State agrees to provide technical assistance regarding Department of Social Services rules, regulations and policies to the Attorney to assist in the correction of problem areas identified by the State's monitoring activities.
6. **LICENSING AND STANDARD COMPLIANCE:**
The Attorney agrees to comply in full with all licensing and other standards required by Federal, State, County, City, or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this agreement. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Attorney's failure to ensure the safety of all individuals served is assumed entirely by the Attorney.
7. **ASSURANCE REQUIREMENTS:**
The Attorney agrees to abide by all applicable provisions of the following assurances: Lobbying Activity, Debarment and Suspension, Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996, Charitable Choice Provisions and Regulations, and American Recovery and Reinvestment Act of 2009 as applicable.
8. **RETENTION AND INSPECTION OF RECORDS:**
The Attorney agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility

(when applicable), the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability required by the State. The Attorney shall retain such records for six years following termination of this agreement. If such records are under pending audit, the Attorney agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement. State Proprietary Information retained in Attorney's secondary and backup systems will remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Attorney's established record retention policies.

All payments to the Attorney by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this agreement shall be returned to the State within thirty days after written notification to the Attorney.

9. **WORK PRODUCT:**

Attorney hereby acknowledges and agrees that all reports, plans, specifications, technical data, drawings, software system programs and documentation, procedures, files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, State Proprietary Information, State Data, End User Data, Personal Health Information, and all information contained therein provided to the State by the Attorney in connection with its performance of service under this Agreement shall belong to and is the property of the State and will not be used in any way by the Attorney without written consent of the State.

Paper, reports, forms software programs, source code(s) and other materials which are a part of the work under this Agreement will not be copyrighted without written approval of the State. In the unlikely event that any copyright does not fully belong to the State, the State none the less reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use, and to authorize others to use, any such work for government purposes.

Attorney agrees to return all information received from the State to State's custody upon the end of the term of this agreement, unless otherwise agreed in writing signed by both parties.

10. **TERMINATION:**

This Agreement may be terminated by either party hereto upon thirty (30) days written notice, and may be terminated by the State for cause at any time, with or without notice. Upon termination of this agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

11. **FUNDING:**

This contract depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this Agreement will be terminated by the State. Termination of any of these reasons is not a default by the State nor does it give rise to a claim against the State.

12. **AMENDMENTS:**

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

13. **CONTROLLING LAW AND VENUE:**

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be resolved in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

14. **SUPERCESSION:**

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

15. **SEVERABILITY:**

In the event that any provisions of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

16. **IT STANDARDS:**

Attorney warrants that the software and hardware developed or purchased for the state will be in compliance with the BIT Standards including but not limited to the standards for security, file naming conventions, executable module names, Job Control Language, systems software, and systems software release levels, temporary work areas, executable program size, forms management, network access, tape management, hosting requirements, administrative controls, and job stream procedures prior to the installation and acceptance of the final project. BIT standards can be found at <http://bit.sd.gov/standards/>.

17. **NOTICE:**

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Attorney, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

18. **SUBCONTRACTORS:**

The Attorney may not use subcontractors to perform the services described herein without express prior written consent from the State. The State reserves the right to reject any person from the contract presenting insufficient skills or inappropriate behavior.

The Attorney will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Attorney will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors. The Attorney is required to assist in the process as needed.

19. **HOLD HARMLESS:**

The Attorney agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Attorney to be responsible for or defend against claims or damages arising from errors or omissions of the State, its officers, agents or employees or from the errors or omissions of third parties that are not officers, employees or agents of the Attorney, unless such errors or omissions resulted from the acts or omissions of the Attorney. Nothing in this contract is intended to impair the insurance coverage of Attorney or any subrogation rights of Attorney's insurers.

20. **INSURANCE:**

Before beginning work under this Agreement, Attorney shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. The Attorney, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits listed below. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Attorney agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Attorney shall furnish copies of insurance policies if requested by the State.

- A. Commercial General Liability Insurance:
Attorney shall maintain occurrence-based commercial liability insurance or an equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit.
- B. Business Automobile Liability Insurance:
Attorney shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$500,000 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.
- C. Worker's Compensation Insurance:
Attorney shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota law.
- D. Professional Liability Insurance:
Attorney agrees to procure and maintain professional liability insurance with a limit not less than \$1,000,000.

Attorney agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject Attorney, or the State of South Dakota or its officers, agents or employees to liability. Attorney shall report any such event to the State immediately upon discovery.

21. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Attorney certifies, by signing this agreement, that neither Attorney nor his/her partners or principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal government or any state or local government department or agency. Attorney further agrees that it will immediately notify the State if during the term of this Agreement, Attorney or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

22. CONFLICT OF INTEREST:

Attorney agrees not to participate as Counsel, in person or his law firm, in opposition to the interests of the State of South Dakota or any of its departments, bureaus, boards or commissions consistent with the policy attached hereto and labeled Exhibit A.

23. LIMITATIONS UPON LEGAL REPRESENTATION:

Is the Attorney/Firm representing the State of South Dakota? Yes ☐ No ☐

If yes, then it is agreed and acknowledged by the Attorney in order for the Attorney to represent the State of South Dakota or the interests of DSS in any court of law, they must receive and maintain an appointment as an Assistant Attorney General from the Attorney General of the State for the duration of the contract term. In the event the Attorney either fails to obtain or loses their appointment as an Assistant Attorney General, it shall be deemed "cause" for purposes of termination as described more fully in Paragraph 10 herein. Additionally, if the Attorney is arrested for or charged with any crime he/she agrees to notify DSS immediately of such arrest or charge.

24. CONFIDENTIALITY OF INFORMATION:

"State Proprietary Information" shall include all the information disclosed to the Attorney by the State. Attorney acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Attorney shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this contract; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this contract; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of

confidentiality at least as strict as those set out in this contract and who have a need to know such information. Attorney is held to the same standard of care in guarding State Proprietary Information as it applies to his/her own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Attorney shall protect confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to the Attorney; (ii) was known to Attorney without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Attorney without the benefit or influence of the State's information; (v) becomes known to Attorney without restriction from a source not connected to the State of South Dakota. State's Proprietary Information shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Attorney understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, SDCL 28-1-29, SDCL 28-1-32, and SDCL 28-1-68. as applicable federal regulation and agrees to immediately notify the State, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the agreement except as required by applicable law or as necessary to carry out the terms of the agreement or to enforce that party's rights under this agreement. Attorney acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this agreement for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meeting laws. If work assignments performed in this Agreement require additional security requirements or clearance, the Attorney will be required to undergo investigation.

25. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

_____ Attorney Signature	_____ Date
_____ State- DSS Division Director Gail Stoltenburg	_____ Date
_____ State – DSS Deputy Secretary Brenda Tidball-Zeltinger	_____ Date
_____ State – DSS Cabinet Secretary Lynne A. Valenti	_____ Date
_____ Litigation and Legal Services Manager for the Governor – Craig Ambach	_____ Date
_____ Attorney General – Marty J. Jackley	_____ Date

State Agency Coding:

CFDA#	_____	_____	_____	_____
Company	_____	_____	_____	_____
Account	_____	_____	_____	_____
Center Req	_____	_____	_____	_____
Center User	_____	_____	_____	_____
Dollar Total	_____	_____	_____	_____

DSS Program Contact Person _____
Phone _____

DSS Fiscal Contact Person _____
Phone _____

Attorney Program Contact Person _____
Phone _____
Attorney Email Address _____

Attorney Fiscal Contact Person _____
Phone _____
Attorney Fiscal Email Address _____

SDCL 1-24A-1 states that a copy of all consulting contracts shall be filed by the State agency with the State Auditor within five days after such contract is entered into and finally approved by the contracting parties. For further information about consulting contracts, see the State Auditor's policy handbook.

Exhibit B

POLICY CONCERNING CONFLICTS OF INTEREST

This policy is adopted to address the issue of potential conflicts of interest with regard to the State of South Dakota and attorneys contracting with the State of South Dakota ("State") to perform legal services. This policy will be attached as an addendum to any contract for legal services entered into between the State and any attorney contracting to perform those legal services and shall become a part of that contract.

- A. Except as provided in paragraph B of this policy, if an attorney contracting to perform legal services with the State has a pending claim against the State or its employees on behalf of a client; or in the event an attorney with an existing contract for legal services with the State is approached by a client seeking to file a lawsuit against the State or its employees, the contracting attorney shall notify the Attorney General and the manager of the state PEPL Fund in writing of that conflict of interest prior to the time a contract is signed or prior to undertaking representation of the adverse client. The Attorney General shall personally decide within ten working days whether or not the State will waive any conflict of interest created by that claim. The Attorney General will consider the magnitude of the claim against the State, the appearance of impropriety which could adversely affect the interests of the State, the degree, if any, to which the contracting attorney has or will gain access to information which would give him/her an undue advantage in representing a client whose interests are adverse to the State, whether the department or agency against which the claim is made is also a department or agency that will be represented by the contracting attorney, and any other factor which the Attorney General may deem pertinent in his discretion.

Notification of the Attorney General under this paragraph, prior to the commencement of an action is not required if the contracting attorney is approached by a client to commence an action against the State and the contracting attorney has a good faith belief that absent immediately filing, the action would be barred by a statute of limitations or comparable provision. Under these circumstances, the contracting attorney shall, as soon as practical, contact the Attorney General regarding the conflict and agrees that if the conflict of interest is not waived, to withdraw from representing the client in the pending action.

- B. Any conflict of interest which may be created by the following situations will automatically be deemed to be waived by the Attorney General and will not be subject to the notification requirements of this policy statement:
1. Any action where the contracting attorney represents a codefendant with the State in a claim or lawsuit, regardless of any cross-claim or third-party claim which the State and the attorney's non-State client may have against each other; unless the cross-claim or third-party claim was readily apparent at the time of contracting with the non-State client and seeks significant monetary consequences; the cross-claim is against a state agency which the contracting attorney represents; or by virtue of representation of the State under contract the attorney had access to information which would give the non-State client an unfair advantage.
 2. Any condemnation action in which the contracting attorney represents a condemned.
 3. Any administrative licensing proceeding in which the contracting attorney appears representing a client, regardless of the fact that the client may make a claim which would be adverse to a position taken by a department or agency of state government; unless the claims, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.
 4. Any administrative proceeding before the Department of Revenue in which the contracting attorney's client may have a claim which would create a potential liability for the State of South Dakota; unless the

claim, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.

5. Any bankruptcy proceeding in which the contracting attorney represents a client other than the State of South Dakota and in which the State of South Dakota has a secured or unsecured claim.

6. Any activity relating to the negotiation of a contract with the State of South Dakota and another client represented by the contracting attorney; unless the contracting attorney is actively representing the department or agency of state government with which the contract is being negotiated; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.

7. The defense of any criminal action; unless the attorney has an existing contract as a special prosecutor in criminal actions for the State of South Dakota; or if, in representation of the State under contract, the contracting attorney had access to information which would give the non-State client an unfair advantage in the criminal action.

8. Any small claims action in which the contracting attorney represents any plaintiff or defendant with interests adverse to those of the State.

9. Any action brought through representation under a long-arm contract or appointment of any other governmental entity, whether or not that governmental entity has interests that are adverse to those of the State; unless the claim, if successful, will have significant monetary consequences against the State of South Dakota.

10. Any action in which the State is a named party but has only a nominal interest, as in mortgage foreclosures and quiet title actions.

11. Any lobbying activity by the contracting attorney.

12. Any worker's compensation case in which the contracting attorney represents a claimant; unless the contracting attorney represents the South Dakota Department of Labor in matters relating to worker's compensation claims or benefits.

- C. The Attorney General reserves the right to raise a conflict of interest, notwithstanding the automatic waiver provisions of paragraph B of this policy, where a conflict of interest covered by the South Dakota Rules of Professional Conduct exists and in the discretion of the Attorney General, is it determined to be in the State's best interest to raise the conflict. The Attorney General shall notify the contracting attorney of the existence of the conflict and the delineation of waiver within seven days of the Attorney General's actual notice of the contracting attorney's action against the State.
- D. For purposes of this policy: 1) the term "contracting attorney" means the attorney actually signing the agreement and his/her entire law firm; 2) the term "State" means the State of South Dakota and any branch, constitutional office, department, agency, institution, board, commission, authority, or other entity by state government; and 3) the term "significant monetary consequences" means that the suit, claim, action or other proceeding against the State, if successful, could reasonably result in the State making payments to the contracting attorney, the client or the class the client represents in excess of \$50,000 or in the case of the proceeding against the Department of Revenue, or other state taxing entity payments or lost revenue in excess of \$50,000.

- E. This guideline shall not be construed as altering or reducing an attorney's obligations to his/her client under the South Dakota Rules of Professional Conduct specifically stated herein.